IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 157 of 2006.

Judgement reserved on:

Date of decision : May 17, 2006.

Paras Ram …….. Appellant.

Versus

State of H.P. & anr. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. Vivek Thakur, Advocate.

For the respondents: Mr. C.B.Singh, Dy. Advocate General, for respondent No.1.

Surjit Singh J. (Oral).

Heard and gone through the record. The appellant-plaintiff filed a suit for declaration that he was owner in possession of 4 Bighas 4 Biswas of land, situated in village Badhiyat, which had been allotted to him, under the Nautor Rules, sometime in the year 1972 and that the order of allotment of 2 Biswas area in favour of respondent- defendant No.2 Khaliti, as passed by the S.D.O., (Civil) on 16.9.1998, was bad. Though it was not very specifically stated in the plaint that 2 Biswas of area had been allotted out of 4 Bighas

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Whether reporters of local Papers may be allowed to see the judgment?

4 Biswas area earlier allotted to the appellant- plaintiff, yet the tenor of the plaint indicated that the allotment in favour of respondent No.2 with regard to 2 Biswas area was challenged on the ground that this was a case of overlapping, i.e. to say that the area had been allotted out of 4 Bighas 4 Biswas already allotted to the appellant- plaintiff.

Respondent- defendant, i.e. the State of Himachal Pradesh, as also the allottee respondent No. 2, took the plea that 2 Biswas area had been allotted not in village Badhiyat, where 4 Bighas 4 Biswas land of the plaintiff is situated, but in another village known by the name of Bahal Kandela. The parties went to trial. The trial court returned the finding that respondent No. 2 had been allotted land measuring 2 Biswas in village Bahal Kandela and hence the suit was misconceived. The first appellate court has affirmed the finding and the decree of the dismissal of the suit.

Appellant has now come in appeal to this court. It is candidly admitted by the counsel for the appellant that as a matter of fact the respondent has been allotted 2 Biswas area in village Bahal Kandela and not in village Badhiyat, out of 4 Bighas 4 Biswas land allotted to the appellant. He says that as a matter of fact, appellant wanted to file a suit that 2 Biswas area has been allotted to respondent No.2, out of a parcel of land measuring 15 Biswas allotted to him (appellant) in village Bahal Kandela, but due to some mistake of fact, on the part of the counsel engaged for filing the suit as also the appeal, the property allotted to the appellant in village Badhiyat was referred to.

An application under Order 23, Rule 1 (3), Code of Civil Procedure, registered as CMP No. 311 of 2006, has also been moved, wherein a prayer is made for the withdrawal of the suit with leave of the court to file a fresh suit on the same cause of action.

Looking to the facts as narrated hereinabove, prayer made in CMP No. 311 of 2006, is allowed. The suit filed by the appellant/ plaintiff, out of which this appeal has arisen, is dismissed as withdrawn with liberty reserved to the appellant- plaintiff to file a fresh suit pleading that the allotment made in favour of respondent/ defendant No.2 Khaliti in respect of 2 Biswas area is out of a piece of land allotted to him in village Behal Kandela.

As a consequence of the passing of this order, the judgements and decrees passed by the trial court as also the first appellate court are set aside. The appeal stands disposed of accordingly.

CMPs No. 224 and 225 of 2006.

Dismissed as having become Infructuous.

May 17, 2006. **(Surjit Singh),**
(Hem) **Judge.**